

**GOVERNMENT DISCRETION OF THE REGIONAL ELECTION IMPLEMENTATION
DURING COVID-19 PANDEMIC THROUGH TECHNOLOGY UTILIZATION
(RECONSTRUCTION AGAINST LAW NUMBER 6 YEAR 2020 CONCERNING
SIMULTANEOUS REGIONAL ELECTION)**

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ABSTRACT

The simultaneous regional elections held in 2020 in Indonesia encountered a problem. The constraints experienced are not due to a lack of supply materials for the elections or the absence of regulations on the regional elections, but to a condition experienced by the whole world, namely the COVID-19 pandemic outbreak. This research is included in normative research with a statutory and conceptual approach. This research aims to formulate the discretion that the government must carry out so that simultaneous regional elections are still carried out as a form of legal protection for the people regarding the right to vote and be elected in simultaneous regional elections, namely elections electronically with the use of technology and then the authors analyse and reconstruct Law Number 6 of 2020 concerning the simultaneous regional elections to formulate rules regarding the existence of an electronic election system to minimize the occurrence of population mobilization.

Key Words: discretion; government; general elections; legal protection.

INTRODUCTION

The general election is one of the characteristics of a democratic country. The implementation of a regional elections in Indonesia varies, namely between general elections for regional heads, elections for people's representatives or what is known as the legislature followed by the presidential and vice-presidential elections. The regional election in 2020 were monumental thing because they were held simultaneously throughout Indonesia. The regulations governing regional head elections are contained in Law Number 10 of 2016 concerning the second amendment to Law Number 1 of 2015 concerning the Election of Governors, Regents and Mayors.

The current COVID-19 pandemic has caused the implementation of the regional elections on September 23, 2020 to be postponed. The postponement is contained in the regulations made by the General Election Commission of Indonesia (KPU), namely by issuing a policy set forth in KPU decree number 179/PL.02-Kpt/01/KPU/III/2020 concerning the Postponement of Election Stages for Governors and Deputy Governors, Regents and Deputy Regent, and/or Mayor and Deputy Mayor in 2020 (Rezky, 2020).

There are several provisions above that do provide a temporary postponement of the implementation of simultaneous regional elections for regional heads throughout Indonesia which would be revised on December 9, 2020 with the issuance of Law Number 6 of 2020 concerning Stipulation of Government Regulation in lieu of Law (Government Regulation) Number 2 of 2020 concerning the third amendment to Law Number 1 Year 2015 concerning the Simultaneous Regional Elections (Jhon Retei, 2020). This has become a dilemma and there is a shaky legal opinion and a pandemic condition which is continuing to carry out the elections simultaneously. Even though a regulation was issued by postponing it, it was only postponed for a few months and in the end, it was not certain that the pandemic outbreak would end when the simultaneous regional elections would still be held.

The government can use a policy that can be implemented at the time of the current pandemic. The policy carried out is by issuing discretion or a breakthrough policy on freedom of action by prioritizing general principles of good governance. However, the freedom to act based on discretion exercised by government administrative bodies/officials is not without limits. This freedom is limited by the General Principles of Good Governance (AUPB), so it is hoped that abuse of authority will not occur. But if there is a legal deviation from the discretionary decision which results in losses to the community, then the discretionary decision must still be accounted for. This is in accordance with the principle of "geen bevoegdheid zonder verantwoordelijkheid", namely that there is no authority without responsibility (Ridwan, 2009).

The author underlines the discretion that must be exercised by the government towards such conditions with the aim of legal protection for the people in terms of the right to vote and be elected in the context of a Democratic Party or regional election (Lutfil, 2015). There are many writings and opinions that say procrastination is the right thing. However, the author argues that the government must exercise discretion that the government continues to carry out the elections according to schedule and by mobilizing all available resources with the latest concepts in the existing general election system in Indonesia. One of them is synchronization of population data in the coordination area with the Ministry of Home Affairs and harmonization of regulations regarding simultaneous regional elections with the use of information technology so that the creation of a regional election system that is electronic in nature is accompanied by integrated coordination with the KPU institution which has the authority to organize democratic parties in Indonesia. The aim is to minimize the occurrence of crowds from the customs of the regional election system who must come to the voter posts.

In the future, this system can be used as a reference in the general election process such as the election of people's representatives and the election of the president and vice president by utilizing technology without having to mobilize on a large scale due to democratic party activities, one of which is the simultaneous regional elections. This is useful for minimizing the occurrence of crowds that occur in society when regional elections are still on-going with the discretion issued by the government, namely by implementing regional elections electronically which still accommodates the rights of citizens to vote in democratic parties.

RESEARCH METHODS

The research approach used in this paper was normative juridical research. According to Jhony Ibrahim, the normative juridical approach method is a scientific procedure to find the truth based on the scientific logic of law and its normative side. The scientific logic that is consistent in

normative legal research is built based on scientific disciplines and the workings of normative science, namely the science of law whose object is the law itself (Jhony, 2006).

In normative research, secondary data is the main or main data that comes from statutory regulations, literature books and official letters that have something to do with the object of research. According to Soerjono and Sri Mamudji, secondary data (library material) consists of primary legal materials, secondary legal materials, and tertiary legal materials (Soekanto & Mamudji). The approaches chosen by the author is the statutory approach and the conceptual approach

DISCUSSIONS AND ANALYSIS OF RESULTS

1) Government Discretion on the Implementation of Regional Elections During the Covid-19 Pandemic Using Technology

The COVID-19 pandemic has brought significant changes to the whole world today, including in the political field, and this certainly affects various important aspects including democracy in Indonesia. The health issue has not yet been resolved, which is an important point in the nation's foundation and economic problems which also complicate the current state of society. Problems in the political field also demand attention that is no less important. This was inseparable from the direct regional election plan to be held in December 2020. Many circles are pessimistic about the current situation considering that many think that public health and economic problems are much more important when compared to the democratic party event which is held once every five years. On the other hand, it is necessary to understand that the 2020 regional elections which will be held in December is also an important mandate of the law that must be implemented (Wahyu, 2020).

The basic idea of the theory of people's sovereignty is very simple, that it is the people who must be the highest source of power in another country the people rule independently of themselves

(Hendra, 2006). This is the most basic right when we talk about people's sovereignty in the simplest way possible, which in how complex it is when we talk about sovereignty in general. However, during the current COVID-19 outbreak, the idea of people's sovereignty may not be right because of their rights to themselves, it will affect the situation that is happening around them. Therefore, the idea of people's sovereignty must actually be understood from various points of view, with the COVID-19 outbreak becoming a major threat in the community, the number of victims that never decreases and tends to fluctuate from day to day proves that the role of government and public awareness is still lacking. Therefore, it requires the participation of all parties to realize how important it is to comply with the health protocol that has been made by the government, which is stated in the Minister of Health Regulation Number 9/2020 concerning Large Scale Social Restrictions (PSBB) Guidelines for the Acceleration of Handling COVID-19, it includes restrictions on certain activities of residents in an area suspected of being infected with COVID-19 including restrictions on the movement of people and/or goods for a particular province or regency/city to prevent the spread of it.

Welcoming the simultaneous regional election of the democratic party in 2020, it should be the entrance to building a quality democracy. Efforts are made to ensure that democratic elections are effective, efficient and produce regional leaders who are representative of the interests of the people in the regions they lead (Alim, 2011). Therefore, the implementation of regional elections is a certainty that will be carried out later. Because it has been the plan of the government and the General Election Commissions of Indonesia (KPU) and other institutions for a long time. Another question arises about how the regional election will be implemented in the middle of COVID-19 and New Normal, namely regarding the issue of supervision, if it is actually carried out simultaneously this question is the next phase that must be answered by the government, what about the supervision system or what procedures are used in the field when it will actually be carried out. There are several problems that will occur later related to several factors including: (1) There are no

regulations regarding health protocols in the New Normal era specifically for the simultaneous regional election implementation made by a competent institution (Task Force/Ministry of Health). (2) Government Regulation in lieu of Law (Government Regulation) 2/2020 does not regulate how the election implementation mechanism in the middle of COVID-19 only gives KPU the authority to carry out the regional election simultaneously (article 122 a paragraph (1)) and the postponement mechanism with mutual agreement between the general election commission, government, and parliament, (article 122 a paragraph (2)). (3) More detailed regulations, such as government regulations, are required for the simultaneous regional elections implementation.

From the above statement, what needs to be ascertained is the Regulation regarding the Health Protocol for the Implementation of Simultaneous Regional Elections 2020 which is made by a competent institution (the regional election organizer and the Ministry of Health/Task Force) Government Regulation 2 of 2020 does not require the involvement of these institutions as a measure of how health protocols should be carried out in order to carry out ~~the~~ simultaneous regional elections in the midst of the COVID-19 pandemic. Furthermore, from this, only the regional election organizers can make Regulations about the simultaneous regional election implementation. Only then can the budget needed for the simultaneous regional elections be measured, then how the campaign will be carried out be determined. As indicators that can measure the implementation of simultaneous regional elections by ensuring the safety of all parties involved (Andrian, 2020).

This must be formulated by referring to the health protocol that has been recommended by WHO in dealing with the COVID-19 outbreak, which is to carry out basic protection, which consists of washing hands regularly with alcohol or soap and water, keeping a distance from someone who has symptoms of coughing or sneezing, doing ethical coughing or sneezing, and seeking treatment when you have a complaint that fits the suspect category. The recommended distance to be maintained is one meter. In this case, it will be one of the obstacles in the field later.

Seeing the many gaps in the implementation of the regional election that will emerge later, the opportunity to commit fraud from various parties will inevitably occur, given that in the regional election situation in the normal period of the previous event there was still a lot of fraud from various parties. This is hard work, many other options have emerged regarding what is the solution to carry out the regional election amid the COVID-19 outbreak, one of which is the proposal to conduct E-Pilkada or regional election with online voting by voters using the E-Voting method.

The government must make a policy quickly and responsively in a situation like this. Discretion must be exercised in such a way as to accommodate the needs of the community, especially during the simultaneous regional elections. This discretion must also get support from the central and regional governments, the House of Representatives (DPR) at the national and regional levels as well as the involvement of the entire community. The current use of technology allows regional elections to be held electronically or what is known as E-Voting. The process of implementing regional elections with the E-Voting system is also the best policy that the government and election administrators should adopt without the need for a delay in the implementation of the elections. The General Election Commission is the institution that is responsible for determining the processes of the Democratic Party. One of them has also become a new highlight, namely the formation of an E-Voting system that can be implemented in the current pandemic era (Julista, 2011).

Various pessimisms from various parties regarding the implementation of E-Voting will become an obstacle because the system is still inadequate, and server security is very crucial so that there are many representatives of the people who are still reluctant to be able to carry out E-Voting. Whereas based on institutional authority, KPU has the independence to determine the process of implementing the elections by E-Voting and this authority has been strengthened in a Constitutional Court decision (Reza, 2020).

Regarding the mechanism for implementing E-Voting, it is indeed something new in the electoral system in Indonesia. This is because there is a need for a combination of cooperation between the KPU as election organizers in Indonesia, the presence of the Central Government, Regional Government and People's representatives is something that must be involved to optimize the implementation of regional elections simultaneously. Synchronization of population data obtained from the Ministry of Home Affairs which has population data can be used as the basis for the E-Voting system being implemented. With this discretion from the Decree issued by the general election commission, both the central government and parliament will certainly support it by strengthening and perfecting the general election s' decision in the content of laws and regulations, namely by the presence of laws on electronic general elections or E-Voting which in the future can be useful for elections on a large scale such as elections for representatives of the people, president and vice president.

If the KPU issues discretion in the form of simultaneous E-Voting elections, both the executive and legislative bodies may support the implementation of this regional election. Due to the postponement of the elections from the predetermined 23 September 2020 to 9 December 2020, the decision made by the KPU is meaningless because its implementation also involves a large number of people present at the election post even with health protocols being carried out. Even this action will certainly lead to the spread of the COVID-19 virus which cannot be reversed not only in Indonesia but throughout the world. Therefore, the General Election Commission as one of the state administration officials is better off issuing a policy regarding the simultaneous implementation of regional elections through the E-Voting mechanism rather than a decision on the postponement which in the end will also be implemented.

As an illustration, E-Voting has several advantages compared to conventional voting, namely: (Nani, 2015): (1) Speeding up vote-counting; (2) The vote count results are more accurate; (3) Saving printed material for ballot paper; (4) Saving on ballot paper shipping costs; (5) Providing

better access for people with disabilities; (6) Providing access for people who have limited time to go to the polling station (TPS).

E-Voting has even been implemented in various countries. For example, Brazil, whose population density is almost the same as Indonesia in the 1990s, has implemented an E-Voting system. Then Australia also conducted an E-Voting system in 1995 (O. Folorunso, 2005). If other countries have implemented the E-Voting system since the 90s, why is there still an opinion even from the people who say that E-Voting is still not applicable in Indonesia? In fact, this breakthrough amid a pandemic can show that the government is serious about fulfilling the rights of citizens in terms of voting at the Democratic Party that will be held.

2) Reconstruction of Law Number 6 Year 2020 Concerning Simultaneous Regional Elections

The COVID-19 pandemic has had an impact in Indonesia with the simultaneous postponement of regional elections for 2020 in 270 regions (9 provinces, 37 cities and 224 regencies) throughout Indonesia due to the COVID-19 pandemic. In the extreme, COVID-19 has "revolutionized" the order of human life in the world. This pandemic has an impact not only on the realm of public health, but also on social, economic, religious conditions and so on, including the simultaneous regional elections in 2020, which should have been postponed in September 2020.

The postponement of some stages of the elections will certainly have an impact on postponing the implementation of the elections, including the implementation of voting and vote counting according to the general election commission's stages which would be held on September 23, 2020. Normatively, the postponement of the regional election in March by the Indonesian general election commission experienced a "legal vacuum", because Law Number 10 of 2016 only regulates related to the follow-up and further regional elections, there is no norm that regulates the postponement of it So that the postponement of the four stages of the elections carried out by the general election commission was only "temporary". Since the stages of the regional election are regulated in a law,

what could (actually) be the basis for the postponement must also be a law, either in the form of a revision of the regional election law or the Government Regulation (Supriyadi, 2020).

The simultaneous regional election travel process in 2020 begins when the General Election Commission issues the Decree Number 179/PL.02-Kpt/01/KPU/III/2020 concerning Postponement of Election Stages for Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayor and Deputy Mayor in 2020. This decision provides for a simultaneous postponement of regional elections which were originally held on 23 September 2020. This decision was signed by KPU chairman Arief Budiman on March 21, 2020. Then the government based on the KPU decision issued a government regulation which was deemed necessary due to the current precarious situation, namely the issuance of Government Regulation of the Republic of Indonesia Number 2 of 2020 concerning Copies of the Third Amendment to Law Number 1 of 2015 concerning Stipulation Government Regulation in lieu of Law Number 1 Year 2014 Concerning the Election of Governors, Regents and Mayors become Law. This Government Regulation was signed by President Joko Widodo on May 4, 2020. After the enactment of it, the government together with the parliament agreed that Government Regulation would be confirmed into law with the issuance of Law Number 6 of 2020 concerning the Stipulation of Government Regulation Number 2 of 2020 concerning the third amendment of Law Number 1 of 2015 concerning The Simultaneous Regional Election. This law was passed on 11 August 2020.

The focus of the aim of the author is the presence of Government Regulation Number 2 of 2020 because Law Number 6 of 2020 is only as a stipulation and ratification the government regulations in question. This is an explanation of the need for reconstruction of the contents contained in Government Regulation Number 2 of 2020. There are several articles that will be analysed by the author as follows: (1) Article 120 that in the event of a non-natural disaster (COVID-19) and the stages cannot be executed further elections will be held or further simultaneous elections and will be continued starting from the stage of holding the Election which

has stopped. (2) Article 122A that the general election commission, through its Regulations, has the authority to determine when the follow-up elections will begin with the joint approval of the parliament and the government. (3) Article 201A that the postponement of regional elections was until December 2020. However, if the non-natural national emergency (COVID-19) has not ended, simultaneous voting will be postponed and rescheduled.

The point in the writer's spotlight is that there is an explanation of Article 122A that the general election commission has the authority to determine when the regional elections will be held simultaneously, and this must be with the agreement of the parliament and the government. Reconstruction needs to be done because this Government Regulation still does not determine exactly when the follow-up regional elections will be held, and this law only reinforces the existence of a postponement of the regional election which was originally held in September which was postponed until December by still looking at the graph and the number of decreases or increases in the spread of COVID-19. The author formulates a reconstruction from Yusuf Qardhawi's description that the reconstruction includes three important points, namely first, maintaining the core of the original building while maintaining its character and characteristics. Second, repair things that have collapsed and strengthen joints that have been weak. Third, include several updates without changing the original character and characteristics (Yusuf, 2014).

The reconstruction here is with the existence of a reformulation of policies issued by the General Election Commission (KPU) in accordance in Article 122A, namely by issuing a discretion that will become a milestone in the revolution of the general election system in Indonesia, namely discretion about election decisions carried out simultaneously with the E-Voting system. This is based on article 122A, which states that the KPU has the authority to determine when the implementation, mechanism and various processes related to regional elections will be held at the same time as the KPU as the authorized institution. Although in the end there will be re-approval from the Parliament and the government with a decision from the KPU regarding simultaneous

regional elections through the E-Voting system, it can be fully supported by the government and the House of Representatives both regarding the facilities, infrastructure, budget, and systems that are implemented until the process is completed.

It is not a problem with the election process carried out through the E-Voting system according to the schedule of the previous regulation, namely December 2020 or even implemented in 2021, but in the author's opinion since the enactment of Government Regulation Number 2 of 2020 has become law, namely the ratification of Law Number 6 Year 2020 on August 11, 2020, the distance between August and December is sufficient to prepare for the simultaneous regional elections through the E-Voting system. So with the general election commissions' initiative to issue a new policy, namely by realizing *Ermessen's freis* or the application of discretion with the aim of implementing Law Number 6 of 2020 Article 122A, issue a decision from the KPU regarding the simultaneous implementation of the regional election with the E-Voting system which is then discussed together with house representatives and government regarding the process and its implementation until it is mature and strengthened by the issuance of a new law which strengthens the simultaneous implementation of regional elections through the E-Voting system.

In the future, the general election process by means of E-Voting can be updated with systems and procedures, as well as increased security so that it can be used in the next election, namely the election of regional representatives and the election of the president and vice president. With the application of E-Voting during the COVID-19 pandemic, the level of the spread of the virus can be reduced and even decreased and this is also a form of legal protection for the people, namely the fulfillment of people's rights to voice their opinions in general elections which are held as a manifestation of democracy in a country.

CONCLUSIONS

The implementation of discretion must also be considered and must be accounted for in accordance with the general principles of good governance (AUPB). The government's discretion for the simultaneous implementation of regional elections with the use of technology is exercised by formulating the election system which is carried out by E-Voting. This aims to minimize the mobilization of the spread of COVID-19, and this is a revolutionary step in the future election system which will be carried out using the E-Voting system.

The reconstruction is related to the existence of Law Number 6 of 2020 which provides for the simultaneous postponement of regional elections which KPU must immediately be addressed because the KPU institution has the authority to determine when the elections will be held. Based on this law, there is a need for quick action from the KPU by exercising discretion in the form of making decisions on the simultaneous implementation of regional elections with the E-Voting system.

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